LEX LOCALIS

Local Self-Government in Hungary

ISTVÁN HOFFMAN

Abstract The the changing approach on the nature of local governance in Hungary is reviewed by this chapter. During the Democratic Transition the evolvement of the Hungarian municipal system was based on the paradigm and approach of the European Charter of Local Government. Thus one of the most autonomous local government system of Europe evolved in Hungary. Although the municipal reforms were basically successful, several dysfunctional phenomena could be observed and the request for the municipal reforms was strong from the late 1990s in Hungary. The new constitution of Hungary, the Fundamental Law introduced a new model. The approach of the local governance has been transformed: the autonomy of the municipalities have been limited. Thus the autonomous nature of the Hungarian model changed and new challenges have appeared in the field of the implementation of the regulation of the Charter.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Hungary

CORRESPONDENCE ADDRESS: István Hoffman, Ph.D., Professor, Eötvös Loránd University, Faculty of Law, Department of Administrative Law, H-1053 Budapest, Egyetem tér 1-3, Hungary, e-mail: hoffman.istvan@ajk.elte.hu; Professor of University, Marie Curie-Skłodowska University, Faculty of Law and Administration, Department of International Public Law, Plac Marii Curie-Skłodowskiej 5, 20-031 Lublin, Poland, e-mail: i.hoffman@umcs.pl.

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1 Introduction and history

The Hungarian regulation on local governance has a long tradition. During the feudal ages, the local governments of the nobility and other privileged persons (for example the bourgeoisie, several privileged ethnicities etc.) had a significant role in the Hungarian administration. Practically, these feudal municipalities were the main executive bodies of the administration, they were responsible for the law enforcement and they were the lower judicial level (1st and – in small cases – 2nd instance) (Mezey et al., 2003: 76-82). At the end of the feudal age, a debate emerged on the future role of the municipalities. The majority of the Hungarian liberal opposition of the Habsburg administration – the so called 'municipalists' – wanted to modernize the feudal local governments and their idea was a decentralized country. The minority of this liberal opposition – the so called 'centralists' – tried to follow the French (Napoleonic) model and tried to centralize the Hungarian administration (Gergely, 2009: 299).

1.1 The beginning of the modern Hungarian municipal system

The modern Hungarian local government system has been evolved after the revolution in 1848. The legislation of the revolution followed the 'municipalist' approach: they began to modernize the former feudal municipalities. Because of the fall of the Hungarian revolution (and freedom fight against the Habsburg Empire) the Habsburg administration was introduced in 1850/51. The Hungarian local self-governments were revived after 1860 and 1867. After the Austro-Hungarian Compromise and the establishment of the Austrian-Hungarian Monarchy the regulation on local governments belonged to the competencies of the Hungarian (royal) administration. The framework of the Hungarian municipal system was formed in 1870/71. Firstly, the self-governance of the counties, the privileged districts and the towns were guaranteed by the new Act XLII of 1870 on the organization of municipal authorities. The former feudal suffrage was abolished by the revolutionary acts of 1848. These municipalities had broad responsibilities, and they were – partly – the executive bodies of the central government. A new supervision model was introduced: the decisions of the municipal bodies were supervised by the Lord Lieutenant *(főispán)* who was appointed by the King at the suggestion of the central government. The Lord Lieutenant was the president of the county (district, town) council and he could suspend those municipal bodies if they acted illegally. The municipal system was transformed partly in 1886. The Act XXI on the municipalities introduced a simplified system. The former privileged districts were dissolved, and they were merged into counties. Thus three type of the municipalities were established: the counties *(megye)*, the unitary authorities *(törvényhatósági jogú város)* and Budapest royal capital city *(Budapest székesfőváros)*. The unitary authorities and the capital city were responsible for the competences of the counties and the communities, as well. The communities *(községek)* had a limited self-governance: they were under the administrative tutelage of the counties. These communities were classified into three groups by the Act XVIII of 1871 on the organization of the communities. The small villages belonged to the first group. These communities could not perform the tasks of a community independently,

therefore they were obliged to form intercommunal cooperation, the so-called circles (kör). The large villages belonged to the second group. They could perform the tasks of a community independently. The small town (towns with regular council) belonged to the third group. Although the regulation was renewed by the legislation of 1886 (Act XXII of 1886 on the communities), this system remained practically the same – with some amendments in 1929 – until 1950. Thus the governance of the rural areas was based on the mandatory intercommunal cooperation of the (small) villages and the broad competences and tasks of the counties which were transmitted to the local areas by the leader of the districts (which were the agencies of the counties) by the chief constable *(főszolgabíró)* (Hoffman, 2009, pp. 88-92).

1.2 The regulation of the Soviet-type administration

After the World War II a Soviet-type administrative system evolved in Hungary. The self-governance of the counties, towns and communities were dissolved, the Soviet-type councils were defined as the local and regional bodies of the central administration. A three-tier system has been established by the Act I of 1950 on the councils: the communities *(községek)* belong to the first tier, the districts *(járás)* and the towns *(városok)* to the second tier, and the counties and Budapest Capital City to the third tier. These entities were directed by the central government. Theoretically the main body of these entities were the councils, but the majority of the competences belonged to the executive committee *(végrehajtó bizottság)* of the councils. These executive committee were under dual control: they were controlled by their own councils and by the executive committee of their superior executive committee (Fonyó, 1976: 452). The former municipal properties were nationalized, the councils could be considered only as the trustees of the state property (Hoffman, 2009, pp. 105-109). The second Act on the councils (Act X of 1954) did not change significantly this model, only the central direction became less centralized. This original model transformed significantly after the economic and legal reforms of 1968. The third Act on councils (Act I of 1971) were passed. Firstly, the *self-government nature* of the councils were recognized by this act, however the councils remain the local and regional agencies of the central government. Secondly, the whole system was decentralized, the role of the county councils in the direction of the local (town and community councils) have been strengthened. The town areas (városkörnyék) were established. The legal status of the districts transformed: the district councils were abolished and in the districts the district offices were institutionalized. These offices were the agencies of the county councils. Thirdly, the merge of the communities was an important process from the 1960s, therefore new regulation on the common village councils *(községi közös tanács)* were institutionalized. In this model the former municipalities preserved their formal independency, but their whole administrative structure was united, therefore a merged municipality was formed. Although merging communities was an important element of the new reforms, the intercommunal associations were reborn. The cooperation between towns and villages was not solved by the merge of the municipalities, and the town areas were not universal in the 1970s. Therefore the town-village associations – which can be classified as

intercommunal cooperation (Kiss, 1985) – were established by a normative tool. Fourthly, the direction of the subordinate councils became the supervision of them, however the judicial remedies against the decision of the supervisory bodies (Hoffman, 2013: 36-38). The system was transformed by the territorial reform of 1983 when the district offices were dissolved. By this reform the town areas became universal in the rural administration. This system existed until 1990. The former centralized structure was converted by the evolvement of the new democratic Hungary.

1.3 Democratic municipal system: the Act LXV of 1990 on the local self-governments

In 1990 a new, local government system was established by the Amendment of the Constitution and by the Act LXV of 1990 on the Local Self-Governments (hereinafter: Ötv). The Soviet-type system was abolished and the self-governance of the local and regional units was recognized.

A very broad municipal autonomy was institutionalized by the Amendment of the Constitution. The Article 44/A defined the 'basic rights' of the local governments which have been guaranteed by the Act XXof 1949 on the Constitution of the Republic of Hungary(hereinafter: Constitution). These 'basic right' should be protected by the Constitutional Court and by the courts. Although these guarantees of the local self-governance were considered as 'basic rights' they constitutional protection was lower than the human rights. It was highlighted by the Resolution No. 31 of 2014 (published September 11th) that these rights – including the essential content of these municipal rights – could be restricted by the Act of the Parliament passed with a qualified (two-third) majority. The municipal structure was regulated by the Constitution, because the Article 41 of the Constitution defined the municipal units (communities, towns, capital and its districts and the counties). Therefore a very autonomous model evolved in Hungary which was based on the concept of 'inherent rights'.[1] This approach was strengthened by the definition of the subject to right to local self-government. The article 42 of the Constitution stated that the subject to this right is the community of the eligible voters of the municipalities.

The scope of the self-governance was defined by a general clause. The article 42 of the Constitution stated, that '[l]ocal government refers to independent, democratic management of local affairs and the exercise of local public authority in the interests of the local population'. The concept of 'local affairs' was interpreted by the paragraph 2 section 1 of the Ötv as 'local public affairs'. This paragraph defined the general clause. After the Ötv local public affairs 'constitute providing local residents with public utilities, locally exercising public power through self-government and creating the organizational, personnel and financial conditions for these'.

[1] The concept of the inherent rights was based on the interpretation of Thomas Jefferson. According to Jefferson, the right to self-governance could be interpreted as a collective right of the local communities (Bowman & Kearney, 2014: 230-234).

The autonomous nature of the Hungarian model was strengthened by another general regulations of the Ötv. The principle of *subsidiarity* prevailed, the priority of the municipal responsibility in the field of local public affairs. Thus the paragraph 2 of section 6 of Ötv stated, that only '[u]nder special circumstances, a public affair may be delegated to the powers and responsibilities of another organization by an act of Parliament.'

The new, democratic municipal system was a two-tier, but local-level centered one. The first tier was the local (community) level. According to the Ötv villages, large villages, towns, county towns and Budapest as the capital city were considered as local-level governments (municipalities). The second tier was the county level. The county local governments had an intermediate service-provider role, but the county-level service delivery could largely be overtaken by the municipalities. The counties lost the majority of their former competences and the democratic legitimacy of them was weakened: the county assembly was elected indirectly. The unitary authorities were not part of the counties. Unitary authorities were formed in those towns which have at least a population of 50 000 inhabitants and have regional significance (after 1994 the county seat towns were ex lege unitary authorities). The local-centered nature of the Hungarian local government system was strengthened by the system of voluntary inter-municipal associations. Therefore, the introduction of a compulsory inter-municipal association system was very difficult (Verebélyi, 1999, pp. 30-36), almost impossible, due to the need for a broad political consensus.

The structure of the municipal administration was transformed. The new structure – the municipalities have the freedom of administration within the framework of the central regulation – was based on the decisive role of the councils (in communities, towns and in the districts of the capital it was called *representative body – képviselő-testület* – and in the unitary authorities, counties and the capital city it was called *assembly – közgyűlés).* The committees of the councils could perform significant competences, but it depended basically on the decision of the council. The administrative body of the municipalities had a dual leadership. The political leader of the administrative body was the *mayor.* Originally the mayor was elected directly in those municipalities which have less than 10 000 inhabitants, but after 1994 the mayor became elected indirectly. The role of the mayor was strengthened after 1990. Firstly, it had political reasons, because typically the mayor was the leader of the governing party or coalition of the council (Soós & Kákai, 2011: 535). Secondly, the competencies and the legal status of the mayor has been strengthened as well. For example, they were elected indirectly and they had practically a suspensive veto power over the decisions of the councils. The administrative body, the so called *mayor's office (polgármesteri hivatal)* had a professional leader: the municipal clerk *(jegyző)* should have legal or administrative qualifications and practice. The clerks were appointed for an indefinite period – following an open call – by the councils on the mayor's proposal. Although the system was dual but the political leaders were factually more powerful: they have strong democratic legitimation and they were the employers of the clerks (without the right to dismiss and appoint and without the disciplinary rights).
The right to the municipal property was recognized by the paragraph 2 article 12 of the

Constitution. After 1991 the municipal property was established: they became the owner of their properties (as I have mentioned, the Soviet-type councils were only the trustees of the local state properties). The incomes of the municipalities were based primarily on the state aid of the municipal tasks. The municipalities could introduce local taxes but the framework of the local taxation (the types of the taxes and their minimum and maximum) was defined by the Act C of 1990 on Local Taxes (Péteri, 1993, pp. 112-113).

The relation between the central and local government transformed radically, as well. The former direction of the executive committees and the supervision of the councils was abolished. The regional (and later the county-level) agencies of the central government had only a weak legal control on the decision and operation of the municipal bodies. These agencies could not quash or even suspend the execution of the decisions: if they found them illegal, then they could initiate the process of the Constitutional Court or the courts which have the right to quash the municipal decisions.[2]

Therefore a very autonomous and democratic municipal system was established during the Hungarian Democratic Transition which could be the solid base of the evolvement of the local democracy in Hungary (Soós & Kákai, 2011: 547-548). But these changes had another side, as well: several dysfunctional phenomena appeared.

1.4 Dysfunctional phenomena of the new municipal system and reform attempts after 1990

Meanwhile, local public service systems – which were built on the duties and responsibilities of the local governments – had several dysfunctional elements. The main dysfunctional element was the fragmented spatial structure which was strengthened by democratic changes, as a counterpart to former Communist times: where compulsory inter-municipal associations (the above presented common village councils) treated size inefficiency problems. This compulsory form was unpopular among Hungarian municipalities; therefore, it disappeared with the democratic transition, giving opportunity to a disintegration tendency in the transition period (Hoffman, 2009, pp. 130-132). This fragmentation and the related size inefficiency problem was tried to be solved by inter-municipal cooperation. The inter-municipal system of the Ötv was based on voluntary cooperation. The new types of associations could not stop the disintegration because of their purely voluntary nature and the poor financial support provided by the central budget. Therefore, the number of service provider associations was only 120 in 1992. The joined municipal administrations decreased in these years: the number of common municipal clerks was 529 in 1991, 499 in 1994, and only 260 administrative inter-municipal associations were established until 1994 (Hoffman, 2011, pp. 30-31). The lack of intercommunal cooperation, the fragmented spatial structure, and the weak, subsidiary intermediate level public service provider role of the county local governments

[2] The municipal decrees could be quashed by the Constitutional Court and the resolutions of the municipal bodies could be quashed by the courts (from 1991 to 1999 by the town courts of the county seat towns and after 1999 by the county courts).

resulted in significant service delivery dysfunctions. The local self-governments – especially the small villages which were the majority of the Hungarian municipalities – were not able to perform a significant part of the municipal tasks. The dysfunctional phenomena of the new, democratic system became well recognizable already in 1992-1993. Therefore, in 1994 a partial review of the regulation took place. The county governments were strengthened: the county assemblies were elected directly, and the competences of the counties were partly expanded. The democratic legitimacy of the county governments were strengthened, as well, therefore the former 'floating counties' became 'politics counties' (Zongor, 2000, pp.19-22). Although the significance of the counties changed, important issues remained partly centralized. Thus the regional development was just partly decentralized by the reform of the Act XXI of 1996. The tasks of the regional development belonged to the competences of the county development boards, which bodies were based on the representation of the central and local government.

The financial status of the municipalities transformed just partially: the municipal bankruptcy was regulated in 1996 by an act of the Parliament (Fábián, 2017, pp. 85).

In 1997 the regulation on inter-municipal associations was changed. Its rules were originally kept very scarce to secure a great organizational freedom for municipalities in this field. New, additional state subsidies were introduced to accelerate the formation of voluntary inter-municipal associations after 1997 (Balázs, 2014, p. 428). As a result of these changes, the number of inter-municipal associations radically increased after 1997. The joined form of municipal administration was stimulated as well. The establishment of common municipal clerks was strongly supported by the central budget. Thus, the disintegration tendencies of the local administration stopped at the end of the 1990s, giving place to the concentration of the municipal administration in rural areas (Balázs & Hoffman, 2017, pp. 11-12). In 2004, the legislator introduced a new type of inter-municipal association – the multi-purpose micro-regional association – based on the French inter-municipal association form 'SIVOM'. The central government significantly supported service delivery through associations: in 2004, the share of the special subsidies for them was 1.19% of the whole central government subsidies for local governments, and in 2011 it already reached 2.91% (Hoffman, 2011, p. 31).

The Hungarian local public services were influenced by the New Public Management paradigm from the late 1990s. The problems of size inefficiency and economies of scale were tackled within the municipal system by inter-municipal associations and the competition tried to be intensified. One of the greatest debts of concentration reforms around the Millennium was the lack of association forms for urban local governments (Horváth, 2015, pp. 48-49).

2 Constitution and legal foundation for local self-government

The Constitution of the Democratic Transition – which was formally the amendment of the former Constitution – was replaced by a new Constitution, the Fundamental Law of Hungary (published on April 25th 2011) (hereinafter: Fundamental Law). The new Constitution entered into force on January 1st 2012. The constitutional status of the Hungarian municipalities were transformed significantly by the new regulation. The municipalities are institutionalized by the Fundamental Law of Hungary. An independent title ('Local Governments') of the Fundamental Law contains the constitutional rules on them. This title contains 5 articles. The paragraph 3 article 31 states, that '[t]he rules relating to local governments shall be laid down in a cardinal Act.',[3] thus a strong political support of the Parliament is required for the regulation on municipalities.

Although the new regulation is based on the concept of the 'local public affairs' – in accordance with the the Article 3 of the European Charter of Local Self-Government (hereinafter: Charter). The paragraph 1 article 31 states that '[i]n Hungary local governments shall function to manage local public affairs and exercise local public power'. Although the concept of local governance have not changed by the Fundamental Law, several important element of the regulation transformed significantly. As it was mentioned by the point 1, the tiers and types of the Hungarian municipalities were defined by the former constitution. Now the title on local self-governments do not define the municipal entities. Similarly, it was regulated by the former Constitution that the local governance is a right of the community of the voters of the given municipal entities. These rules are not regulated by the Fundamental Law. Therefore the types and tiers of the municipalities and the subject of the self-governance can be defined by the (cardinal) act on local self-governments.

The most important transformation of the new Fundamental Law is a paradigm shift on the concept of the nature of self-governance. The self-governance was interpreted by the former Constitution as a fundamental right of the local and regional communities. The main competences and liberties of the local self-governments were interpreted as a 'fundamental rights'. It was highlighted that these municipal rights were not equal to the fundamental rights of the persons, but it was clear, that the Constitution of the Democratic Transition was based on the concept of inherent rights (Bodnár & Dezső, 2010, pp. 220-222). These concept has been transformed by the Fundamental Law. The article 32 of the Fundamental Law contains the major municipal competences. These competences are not defined as 'fundamental municipal rights', and it is highlighted by the new regulation, that the municipalities could perform these competences only 'within the framework of an act'. These competences are similar to the former 'fundamental municipal rights' and they are defined by the paragraph 1 article 32 of the Fundamental Law. Thus the competences of the municipalities could be widely limited and restricted by the acts of the Parliament.

[3] The cardinal acts should be passed by the two-thirds majority of the members present in Parliament. See paragraph 4 article T) of the Fundamental Law.

The new regulation is based on the concept of the municipal competences of the German Constitution *(Grundgesetz).* The pattern of the paragraph 2 article 28 of the German *Grundgesetz* was followed by the Hungarian regulation. The transformation of the interpretation of the municipal competences was highlighted by the Resolution No. 3105/2014 (published on April 17th) which stated that a municipality cannot file a constitutional complain, because they do not have fundamental rights and the constitutional complain is the tool of the defense of fundamental rights. The paragraph 1 article 32 of the Fundamental Law was interpreted as a rule on the municipal competences and not on municipal 'rights'. This interpretation has been confirmed by the Resolution 3180/2018 (published on June 8th), as well.

Thus the former paradigm – which could be interpreted as an 'autonomous model' – transformed into a model which could be interpreted as an 'integrated model' (after the classification of Kjellberg, 1995). This approach is highlighted by the paragraph 1 article 34 of the Fundamental Law, which states that the '[l]ocal governments and state organs shall cooperate to achieve community goals.' The integrated approach is mirrored by the definition of the Fundamental Law on municipal asset. The municipal asset is interpreted by the paragraph 6 article 32 as a 'public property which shall serve for the performance of their tasks.' Thus the municipal asset is practically a 'purpose fund': if the tasks are changing, the municipal asset could be transferred to the new body (responsible for the task). This concept is strenghtened by the paragraph 1 article 38 of the Fundamental Law: the national asset contains the property of the State and of local governments.

Thus the concept of the local governments have been transformed after 2012. A relatively wide regulatory freedom on the municipal law has been allowed by the new constitutional regulation. The basic structure of the municipal law has not changed. There is a cardinal Act on the municipalities, but a new Act was passed after the publication of the Fundamental Law. The new Municipal Code is the Act CLXXXIX of 2011 on the Local Self-Governments of Hungary *(Magyarország helyi önkormányzatairól szóló 2011. évi CLXXXIX. törvény* – hereinafter Mötv). As part of the transformation of the regulation on municipal system the subject of the local governance and the type of the municipalities are defined by the Mötv and not by the Fundamental Law. It is defined by the article 2 of the Mötv that the local governance is a right of the voters of the communities and the counties. Thus the two-tier municipal system has remained: the community and the county levels have been institutionalized. Therefore former constitutional rules are regulated now by the Mötv.

It is stated by the paragraph 1 article 34 that '[a]n Act may set out mandatory functions and powers for local governments.' Therefore the mandatory tasks of the municipalities are defined by the different Acts on the given sectors. Thus rules on the municipal competences are incoporated into several (sectoral) acts. For example the mandatory tasks of the municipalities in the field of social care is defined by the Act III of 1993 on the Social Administration and on the Social Benefits. The municipal educational competences are regulated by the Act CXC of 2011 on the National Public Education.

The exectuive regulation on the municipal tasks could be regulated by Government and – partly – by ministerial decrees after the paragraph 1 article 14 of Mötv.

The Hungarian regulation on the comstitutional and legal foundation for local self-government is based on the article 2 of the Charter. The new constitution of Hungary, the Fundamental Law have a title on the status of the local self-government. The major rules on municipalities are defined by an independent Municipal Code, by the Mötv which is a cardinal act (an act should be passed by the two-third majority of the Parliament). The regulation on mandatory municipal tasks should be regulated by Acts of the Parliament. The Government of Hungary and the ministers could pass only exectuive decrees on the detailed regulations of these obligatory tasks. Thus the Hungarian regulation is in accordance with the article 2 of the Charter but it should be highlighted that the approach was tranformed by the new Constitution. The types of the municipalities and the subject of the right to local governance is now defined by the Mötv and not by the Constitution, thus the constitutional defense of the municipal system has been weakened.

3 Scope of local self-government

The Hungarian municipal system is based on the *general clause of local public affairs.* As I have mentioned, the article 31 of the Fundamental Law states that the local governments have *general powers* in local public affairs. As I have mentioned, the basic competences of the municipalities are defined by the paragraph 1 article 32 of the Fundamental Law. [4] Thus, in the management of local public affairs and within the framework of an Act, local governments: a) shall adopt decrees; b) shall take decisions; c) shall autonomously administer their affairs; d) shall determine the rules of their organization and operation; e) shall exercise the rights of ownership with respect to local government property; f) shall determine their budgets and autonomously manage their affairs on the basis thereof; g) may engage in entrepreneurial activities with their assets and revenues available for this purpose, without jeopardizing the performance of their mandatory duties; h) shall decide on the types and rates of local taxes; i) may create local government symbols and establish local decorations and honorific titles; j) may request information from the organ vested with the relevant functions and powers, initiate decisions or express an opinion; k) may freely associate with other local governments,

[4] See paragraph 1 article 32 of the Fundamental Law: 'In the management of local public affairs and within the framework of an Act, local governments: a) shall adopt decrees; b) shall take decisions; c) shall autonomously administer their affairs; d) shall determine the rules of their organization and operation; e) shall exercise the rights of ownership with respect to local government property; f) shall determine their budgets and autonomously manage their affairs on the basis thereof; g) may engage in entrepreneurial activities with their assets and revenues available for this purpose, without jeopardizing the performance of their mandatory duties; h) shall decide on the types and rates of local taxes; i) may create local government symbols and establish local decorations and honorific titles; j) may request information from the organ vested with the relevant functions and powers, initiate decisions or express an opinion; k) may freely associate with other local governments, establish associations for the representation of their interests, cooperate with local governments of other countries within their functions and powers, and become members of international organizations of local governments; l) shall exercise further functions and powers laid down in an Act.'

establish associations for the representation of their interests, cooperate with local governments of other countries within their functions and powers, and become members of international organizations of local governments; l) shall exercise further functions and powers laid down in an Act.

The framework of the general powers are defined by the concept of 'local public' affairs and by legislation. The municipalities have general powers in the field of their local public affairs. This concept is interpreted by the section 4 of the Mötv. Thus the concept of local public affairs have three elements. Firstly, the *provision of the local public services* belongs to the local public affairs. Thus the performance of the local public services are primarily municipal competences, the municipalities main function is to provide the basic services for the local population. Secondly, '*local governance and the cooperation with the local population'* is interpreted as local public affairs. Thus the municipalities could exercise public powers and the forms of local direct and indirect democracy is interpreted as local public affairs, as well. Similarly, the organizational, personnel and material resources of these tasks is defined as local public affair, and belong to the competences of the municipalities. Another important element of the constitutional regulation that this local public affair could be limited by the legislation (Szente, 2013, 154-155).

Thus the municipalities have general powers in local public affairs and within the framework of an act – actually under the law. Thus the responsibilities of the municipalities can be restricted by the central legislation, however the limit of this restriction could be the 'competences guaranteed by the Fundamental Law [see Decision No. 47 of 1991 (published on September 24th) of the Constitutional Court of Hungary].

Two major group can be distinguished among the tasks performed by the municipalities and the bodies of the municipalities.

3.1 Municipal tasks

The *municipal tasks* belongs to the first group and the so called *delegated tasks*. The mandatory municipal tasks, the alternative municipal tasks and the facultative municipal tasks can be distinguished within the municipal tasks. The major responsibilities of the municipalities are defined by the section 13 of Mötv. This section is not a rule by which the competences are directly installed, but it can be interpreted as an open list which defines the framework of the task performance of the Hungarian municipal system. This open enumeration is interpreted as a list of the *possible and typical tasks of the different types and tiers of the Hungarian local government system.* As I have mentioned, the actual municiapl competences and mandatory tasks are regulated by the sectoral acts.

Another general rule on the scope of the municipalities are the concept of the differentiated installation of powers and responsibilities. The legal status of the Hungarian municipalities are equal, but their tasks and responsibilities could be different because of the different size and economic capacity. Thus the section 11 of the Mötv states that the

different types of the municipalities – the communities, the towns, the district-seat towns and the county towns – could have different tasks. It is a legal prescription that the legislator should define the mandatory tasks of these municipalities different. The economic capacity, the population, the area of the municipalities should be considered by the legislators when the mandatory tasks are defined (Nagy & Hoffman, 2016, pp. 67-70).

Obligatory municipal tasks are defined by act having. According to a significant modification of the regulation, *new instruments of legal supervision* could guarantee the fulfilment of these tasks. Beyond the new instruments of legal supervision the *differentiated installation of tasks* is required. Although this differentiation was allowed by the Act LXV of 1990 on Local Self-Governments, it is required by the New Municipal Code. Thus the tasks of the diverse municipalities should be defined differently by the sector/special regulations. The main criteria of this installation of tasks are determined by Act CLXXXIX on the Local Self-Governments of Hungary. Thus 1. the nature of the duty, 2. the different capability of the local governments, especially the different economic performance, population and the size of the area of the municipality shall be taken into account (section 11(2) of the New Municipal Code). The personnel, the material and the financial conditions of the performance of the obligatory tasks (public services) can be regulated not only by acts, but also by the decrees of the Hungarian Government and by the decrees of the ministers after these general rules of the municipal law. This right of the central government to regulate the conditions of (local) public services is not unconditional: Resolution 47/1991. (24th September) of the Hungarian Constitutional Court declared that the decree which entirely excludes the free decision of the local government breaches the constitution. The performance of the obligatory municipal tasks has *priority* because the performance of these duties must not be jeopardized by the performance of the facultative tasks of local governments.

Thanks to the continental (general clause) approach of the Hungarian local government system, these tasks may be performed which are not required by acts: namely the *facultative tasks of the local governments.* I have mentioned that the main aim of the municipalities is the fulfilment of the obligatory tasks, thus local governments can provide these tasks if *strict legal conditions* are met. As I have mentioned, municipalities can perform as a facultative task only *local public affairs*. Local governments could perform such a task which is not among the responsibilities of the central government. Therefore the Constitutional Court declared that a local government decree by which a city policy (with the powers and duties of the – state – police) was established is a breach of the constitution [Res. No. 8/1996. (23rd February) of the Constitutional Court]. Secondly, the performance of facultative tasks cannot be contrary to the law. As was mentioned above, obligatory tasks have priority. The performance of facultative tasks can be funded only by *own revenues of the local governments* and by *special central subsidies* for these tasks determined by the (annual) Act on the Budget of Hungary. Thus Hungary has a unified state police system, where the police are maintained and directed by the central government. However, special regulations regarding the tasks of local public

safety are determined by the Act on the Local Self-Governments of Hungary. Municipalities are allowed by the new Municipal Code to establish bodies responsible for local public safety and for the preservation of local government assets. This body can use force determined by acts. This task is obviously facultative. Because the use of force, the central government has stronger supervision: the (state) police have not only legal but technical supervision powers, as well. Therefore the municipality should establish agreements with the police (Fábián & Hoffman, 2014, pp. 327-329).

The third element of the municipal tasks is *alternative (voluntarily assumed) tasks*. This type of municipal task has evolved in the "border area" of the obligatory and facultative tasks in the European municipal systems. These tasks could be defined as a "correction tool" of the differentiated installation of tasks. The possibility of the voluntary assumption of the tasks of the county level local government or those settlement level municipalities which have a larger population or greater economic power could solve the inelasticity of the differentiated tasks system determined by central regulation (by acts). In the European municipal systems this opportunity was regulated by sector/special acts. Although the European acts on local self-governments have not contained this type of the tasks, the Hungarian municipal law allows and it has been regulated by the Hungarian municipal codes. This specialty of the Hungarian regulation remained, however it was transformed significantly. The first tier (community-level) municipalities and their inter-municipal associations can voluntarily assume the obligatory tasks of those first tier municipalities which have greater economic capacity or larger population, if 1. the transfer of tasks is justified by the needs of the population of the (smaller) municipalities, and 2. after the assumption the public services are provided more efficiently and at least on the same professional standard, and 3. supplementary state subvention is not required for the performance. The tasks of the second-tier (county) municipalities cannot be assumed. If these requirements are fulfilled the tasks are assumed by the decree of the municipality (or by the resolution of the inter-municipal cooperation). The procedure and the conditions are legally supervised by the County Government Office. Financing of the alternative tasks is similar to the obligatory tasks: the assuming municipalities get the same amount from the central budget as those municipalities which should compulsorily perform these services. A special type of the alternative tasks is if *the tasks of the central government* are assumed by a local government. A strong limit of the municipal task performance is that a local government project funded by the European Union could be completed by the Government for the fulfilment of the national obligation to the European Union – despite against the will of the given local government. This right is the final guarantee of the compliance with the national obligations because Member States are responsible for these obligations and are represented by their Governments. Thus, primarily the central governments are responsible for the offences of the local governments. Therefore the Government of Hungary has this right. Municipalities have legal remedies against these decisions (Nagy & Hoffman, 2016, pp. 80-82). The resolution of the Government of Hungary can be (judicially) revised by the Budapest-Capital Regional Court.

3.2 Delegated tasks

It has been widely allowed by the Hungarian municipal law for the officers of the local governments to perform central government tasks by the officers of the local governments. If the officers make a decision in their delegated power, this decision cannot be considered as a municipal decision. Therefore, the municipal bodies and organs cannot direct this officer. The reason of for the transfer of power is the efficient and grassroots public administration. There are powers and duties which have to be performed at the settlement level but it is not efficient if the central government had has agencies in every settlements.

Because the delegated nature of these powers, the territorial central government agencies have not only legal but technical supervision rights. These agencies are the supervising organs of local government officers, which supervision is regulated by the Act CXXVI of 2010 on the County Government Offices.

Although the number of the cases, in which the officers of the local government have had duties in delegated power, was reduced by the establishment of the District Government Offices in 2013, these officers play an important role in the Hungarian regulatory activities.

Originally the mayor and the president of the county council could perform delegated duties by according to the original text of the paragraph 3 article 34 of the Fundamental Law. The Government Resolution No. 1299/2011. (published on 1st September) on the Establishment of the Districts was in line with this approach. The separation of the municipal and central government tasks was planned by the sub point 2. *j)* of that Resolution. The rigid separation of these tasks was not fulfilled: the delegated powers of the municipal clerks *(jegyző)* were allowed by paragraph 2 article 28 of the Transitional Provisions of the Fundamental Law (published on 31st December 2011). This was a limitation, because formerly the mayor, the clerks and the officers of the Mayor's Office could perform these powers. The original state of the regulation has been restored by the Fourth Amendment of the Fundamental Law (published on 25th March 2013) which affected paragraph 3 article 34 of the Fundamental Law. Thus the mayor, the president of the county council, the clerk and the officer (civil servant) of the Mayor's Office could perform delegated powers and duties. A significant change is that the right of the central government has been limited by the Fundamental Law. The differences between the municipal and delegated administrative tasks are shown by the following table.

Table 1: Municipal and delegated regulatory cases

	Municipal regulatory cases	**Delegated regulatory cases**
Related to…	*Local public affair*	*National or general public affair*
Which type of legal norms could define it?	*Act of the Parliament, Decree of the Local Self-Government*	*Act of the Parliament, Governmental decree issued under the authority of an act*
Acting authority	*Representative Body ;* under the authorization of the representative body the mayor, the clerk, the committee of the representative body and the inter-municipal association	*Mayor, clerk, officer (civil servant) of the Mayor's Office;* by the agreement of the local governments, the inter-municipal association
Remedies	If 1st instance is the representative body, then remedy to the court (Administrative and Labour Court) If 1st instance is the mayor, committee, clerk or inter-municipal association, then appeal to the representative body (after the 2nd instance decision of the representative body: remedy to the court) – according to the article 142/A of the Mötv.	*Appeal* if the 1st sentence is the mayor, (municipal) clerk, officer (civil servant) of the Mayor's Office, the 2nd instance is in principle the County Government Office, but another supervising authority can be defined by an Act or by a Decree of the Government (article 44 of the Act No. CXXV of 2018 on Government Administration)
Role of the County Government Office	It is not covered by the legal supervision, either.	Supervising authority under the article 44 of the Act No. CXXV of 2018.

Source: own editing

4 Protection of local authority boundaries

Formerly the main regulation on the boundaries of the municipal authorities were defined by an independent act, by the Act XLI of 1999 on the Land Management. Now the regulation on the boundaries and on the establishment of the municipal units are integrated into the Mötv. The main rules on them are defined by the Chapter V of the Mötv. Although the norms of the land management are part of the general Municipal Code, these regulation are declared as non-cardinal rules which van be passed and amend by the simple majority of the Members of Parliament.[5] The Act on the Local Self-

[5] In Hungary the cardinal rules of the different acts are defined by the acts. Thus the majority of the Hungarian cardinal acts are just partially cardinal: they contain several articles which should be passed or amended with simple majority of the Parliament (Jakab & Fröhlich, 2017, pp. 425-426).

Governments of Hungary states that the local voters of the villages and towns (first tier or community local governments) and the counties (county local governments) has the right to self-governance. Firstly, a local community can have in that case autonomy in that case, if it is classified as a village, or as a town or as a county. These questions are regulated by the Chapter V of Mötv. Secondly, the scope of the municipalities are determined by their borders. Therefore the definition of the municipal borders are an important element on the autonomy of the municipalities. Therefore several guarantees and standards are defined by the article 5 of the Charter. In the following the regulation on the land management in Hungary will be reviewed. In the Hungarian law the land management has different topics: firstly, the establishment of the municipal units and secondly the rules on the change of the boundaries of local governments. In the following the regulation on these topics will be reviewed in the system of the Hungarian regulation.

4.1 Declaration (establishment) of a village

The smallest unit which has the right to self-governance is the *village* in Hungary. The Mötv does not contain any definition of the village.[6] Only the *conditions* of the declaration of village are determined by the municipal law. Thus the declaration shall be initiated by local voters of a geographically and architecturally separated, populated area, which unit is able to the exercise the right to self-governance and is able to perform and organize the municipal tasks without the decline of the service standards. The village can be established if these conditions are met by the remained and the newly established settlement, as well. Before the declaration of a village a local referendum shall be held: the whole population of the "old" settlement (and not only the population of the populated area which wants to be a new village) shall be involved. Other conditions of the declaration are that the population of the separated populated area has increased in the last ten years, the infrastructure is more developed than the national average and the municipal tasks are provided performed at lower costs by the local government than the national average. The aim of these very strict conditions has been to slow down the increasing number of municipal units. These conditions can be fulfilled very hardly, therefore, the number of the villages have not changed since 2013 (Rozsnyai, 2013, pp. 39-40).[7] The conditions and requirements are examined by the minister responsible for the legal supervision of the local governments (in the current Government system this minister is the Minister of the Prime Minister's Office). The decision of the minister can be judicially reviewed by the Budapest-Capital Administrative and Labour Court. If the minister supports the lawful initiative, the village could be declared by the President of the Republic. The President can review the legality of the proposal and can deny it. There is not remedy against the decision of the President.

6 The last legal act which defined the village was the – the last act which contained this definition was the Act XLII of 1870 on the communities (Beluszky, 2004, pp. 149-151).
7 The last declaration (establishment) of village was made in 2013. This last decision was the establishment of Village Balatonakarattya by the Resolution of the President of the Republic No. 13 of 2013 (published on January 13th).

4.2 Amalgamation of the municipalities

Villages and towns which have been built together can initiate their amalgamation. This results practically the termination of the former municipalities and the establishment of a new local self-government which is the (legal) successor of the former settlements. The amalgamation of the municipalities are is declared by the President of the Republic on a proposal of the minister responsible for the legal supervision of the local self-governments. Because the subject of the right to local self-governance is changed by the amalgamation of the municipalities, local referendum shall be held.

4.3 Replacement of the parts of the communities (transformation of the municipal boundaries)

The subject of the local self-governance could be partially change when the boundaries of the municipalities change. These changes can be initiated only by the municipalities, the central government could not transform these boundaries after the regulation of the Mötv. Because of the partial change of the subject of right to self-governance if habited parts of the towns and villages are affected by the boundary changes, local referendum shall be held. Because the right to self-governance is not affected by the replacement of *uninhabited* parts of the municipalities, therefore it can be decided by the resolutions of the representative bodies (councils) of the given municipalities. The change of the boundaries of the counties is an independent procedure which will be analysed later.

4.4 Towns

The Mötv states that the representative body of a village which have has a central role and reaches the average urban development can initiate the *declaration of a town*. A community is declared town by the President of the Republic on a proposal of the minister responsible for the legal supervision of the local self-governments. The towns should provide services – which are defined by an Act – not only for their population but for the population of their agglomerations. *County towns* are the seat towns of the counties and the towns which were declared county towns before 31st December 2012.[8] The *district headquarters' towns* are assigned by a Government decree – which is now the Government Decree No. 86/2019. (published on April 23rd) on the County Government Offices and on the District Offices.

4.5 Counties and the Capital of Hungary

The territory, the name and the seat towns of the counties and the Capital and the system of the metropolitan districts of the Capital are determined by the *Parliament*. Because of the change of the subject of the local government in several cases, a local referendum is

[8] There are five county towns which are not the seats of their counties: Dunaújváros, Érd, Hódmezővásárhely, Nagykanizsa and Sopron.

required before the decision of the legislator. In the case of the change of the name of the county, the county government could give an opinion on it. The metropolitan district system of the Capital is defined by an Act of the Parliament which is based on the initiatives of the given metropolitan municipalities. The regulation is consistent with the article 5 of the Charter but this rule can be overwritten by the Amendment of the Mötv. Thus a new type of the metropolitan administrative units were established by an Amendment of the Mötv in 2013: the Margitsziget as directly managed territory of the Capital Government. This territory formerly belonged to the 13th District of the Capital. The constitutional complaint of the Metropolitan District Government was rejected because constitutional complaint could be filed on the basis of the offense of the fundamental rights, and the – as I have mentioned earlier – the guarantees of the self-governance are not interpreted as fundamental rights by the new Fundamental Law [see Decision No. 3105/2014. (published on April 17th) of the Constitutional Court].

Thus the regulation of the Mötv is based on the article 5 of the Charter. If the subject of the local government changes local referendum is required. The majority of the land management procedures are based on the initiatives of the municipalities. But these rules could be circumvented by the amendment of the Mötv, because these rights are guaranteed by the Mötv.

5 Administrative structures and resources for the tasks of local authorities

The administrative structure of the local authorities is based on the point d) paragraph 2 article 32 of the Fundamental Law, which declares, that the municipalities shall "within the framework of law …determine its organizational structure and rules of operation". Thus the local authorities have great freedom to institutionalize new local bodies, but the framework of the local administrative structure is defined – in a very detailed form – by the Municipal Code (Mötv). The organizational freedom of the municipalities have been recognized by the Hungarian Constitutional Court and by the Curia, as well. It is stated that the bodies defined by the Mötv should be formed. According to this approach the Decision No. 22/2015 (published on June 18th) stated that this freedom is "within the framework of law", thus the central legislation can institutionalize municipal bodies. Another limit of this freedom is, that the municipal tasks should be fulfilled by the municipal administration. If the local administrative system do not fulfil their tasks the central government and the county government offices have the opportunity to form several bodies – within the framework of the regulations of the Mötv. Thus this resolution stated that the establishment of the joint municipal office by the county government offices does not conflict with the provision of the Charter. The common municipal offices – as it will be shown later – are established by the given municipalities. If these municipalities do not form this – mandatory type inter-municipal associations – the county government offices have the right to appoint the communities which are part of this cooperation. Because of Constitutional regulation and the *ultima ratio* nature of this power, it basically complies with the provisions of the article 6 of the Charter. But it was against the Charter that the opinion of the municipalities should not be asked during this

procedure. Therefore the Hungarian Constitutional Court stated that the lack of the rules on the procedure for asking the opinion of municipalities is an unconstitutional omission. The deadline for the remedy of the omission was December 15th 2015, but the new regulation was passed only by the Act CXXI of 2018 (which entered into force on January 1st 2019.

Although the central legislation is a strong limit of the organizational freedom of the municipalities, the Decision No. 834/B/2003 stated that the municipalities could form such bodies which are not institutionalized by an Act of the Parliament and which fulfil municipal tasks. Therefore it was stated that the institutionalization of the fractions of a county town assembly is consistent with the freedom of the organizational freedom. Another limit is, that the fulfilled task should be a local task: if the task does not belong to the municipal tasks, the establishment of the local body is unconstitutional. Therefore the Decree of the Town Municipality of Gyula No. 20/1993. (published on April 19th) on the Town Police of Gyula was annulled by the Decision No. 8/1996. (published on February 23rd) because the tasks of the Town Police belonged to the tasks of the Hungarian (state) Police, and therefore these competences were not 'local public affairs'.

Within the above mentioned constitutional framework the central body of the Hungarian local government is the *representative body* (in the counties, in the county towns and in the capital the *assembly).* The municipalities are represented by the representative bodies which are practically the councils of the Hungarian municipalities. The decision of the representative body can be of two types, namely a *decree* or a *resolution.* A *decree* is a legal act (law) which cannot be contrary to other legal regulations; thus it is at the lowest level among the legal hierarchy. Local governments can adopt a decree *in their own right* in accordance with article 32(2) of the Fundamental Law, which *allows local governments to publish legal regulations in their duties*. *Local governments can be authorized to adopt a decree by an Act* (of the Parliament), as well. The decrees are signed by the mayor and the clerk. The publication of the local government decree is different from the publication of the central legislation. It shall be published in the official gazette of the local government, or if the local government does not have an official gazette, it shall be published in the manner customary for the locality. Since 2013/2014 the decrees of local governments shall be available on the National Law Library, which can be accessed on the Internet (www.njt.hu). As I have mentioned earlier, the representative body has only municipal tasks and duties; it cannot have delegated administrative tasks. Duties of the representative body can be classified as *non-transferable duties*, in which only the representative body can make decisions; and *transferable duties*, which can be delegated to the mayor, the committee, the representative body of the sub-municipal entities, he inter-municipal associations and to the clerk. (Fábián & Hoffman, 2014, pp. 337-339). The chairman or chairwoman of the representative body is the mayor. If the mayor is unable to attend to his or her responsibilities, he or she is substituted by one of the deputy mayor who has been elected for councillors. The representative body shall convene as needed, as often as is called for in the organizational and operational regulations but *at least six times per year*. The representative body shall hold an announced advanced *public*

hearing at least one time per year. The session of the representative body (council) is *in principle public.* The Local Government Council of the Curia states in the Res. No. Köf.5.036/2012/6. that "the public of the exercise of power is the basis for the democratic operation and it is the cornerstone of the operation governed by the rule of law". There are *three options* defined by the Mötv in which the council has to or shall or may convene *in camera.* The representative body has a *quorum* if more than half of the councillors are present at the session. The Local Government Council of the Curia stated in the Res. No. Köf.5.003/2012/9. that the participation shall be in person, which does not allow a session to hold a session by video conference or to a vote to be sent by letter or by other mode.[9] The quorum shall be observed maintained continuously during the session. The representative body makes a decision by *simple* or by *qualified majority.* The majority is *simple* if the proposal is supported by the majority of the present councillors. The majority is *qualified* if the proposal is supported by the majority of the elected councillors. A qualified majority is needed for example for the adoption of a local government decree, for the establishment of an inter-municipal cooperation or institution, the exclusion of a councilor or to establish the a conflict of interest or the indignity (see section 50 of the Mötv). Protocol shall be prepared on the sessions of the representative body which is signed by the mayor and by the clerk, and it will be sent to the supervising authority, to the county (metropolitan) government office within 15 days after the session.

Representative bodies can establish *committees* for more efficient and faster decision making and for the adequate control. Establishment of the committees can be required by an act (of the Parliament). The Act on Local Self-Governments of Hungary contains such a rule, as well. The community having a population of at least 2000 people shall establish an economic committee according to the order of section 57(2) of the new Municipal Code. Villages having a population of maximum 100 people cannot establish committees and villages having a population of maximum 1000 people can establish only one committee which can fulfil duties of all committees which establishment is required by the law. *Sub-municipal councils* can be established, which are interpreted as special committees of the representative bodies.

The personal and political leader of the municipality is the *mayor,* who have been elected indirectly since 1994.[10] The mayor has significant powers. First of all, the mayor is the chairperson of the representative body, several personal decisions are determined by the mayor: for example, the mayor has the right to nominate the deputy mayors and the members of the committees of the representative bodies. The mayor has a suspensive veto on the decisions of the representative body. The veto of the mayor has been strengthened by the regulation of the Mötv: if a decision is vetoed, the representative body could accept it with a qualified majority. The representative body is represented by the mayor. The

[10] From 1990 to 1994 the mayors of the municipalities with more than 10 000 inhabitants were elected by the representative body. The only exception is the election of the personal and political leader of the county government. The chairperson of the county assemblies are elected by the county assembly (Nagy & Hoffman, 2016, pp. 120-124).

mayor could accept in special cases – defined by the organizational and operational rules of the municipality – substitute decisions by which resolutions the decisions of the representative bodies are substituted. Secondly, the mayor s the leader of the municipal decision-making. The county clerk (jegyző), the professional leader of the municipal office (or joint office) is appointed by the mayor, and the mayor is the employer of the clerk. Thus the municipal office (which is called 'mayor's office') dependent on the mayor. The mayor has several municipal and delegated state administration powers, as well (Nagy & Hoffman, 2016, pp. 264-265). Thus the model of the administrative structure of the Hungarian municipalities were centralized by the Mötv: the personal political leadership has been strengthened.

The professional leader of the municipal decision-making is the municipal clerk. The clerk is a qualified (in the field of law and management studies) civil servant and he or she is appointed by the mayor for an indefinite term. Formerly, the clerk was appointed by the representative body, but in the new model, the clerk is practically a high-ranking subordinate of the mayor. The clerk has different tasks. First of all, he is the clerk is the professional leader of the municipal office: he or she is the employer of the civil servants, but her or his employer's right is limited by the right of consent of the mayor. Secondly, the clerk is a professional legal advisor of the representative body: he clerk is responsible for the minutes of the sessions of the representative body and he or she shall signalize if the representative body would break the law. Thirdly, the clerk can fulfil several municipal tasks – defined by municipal decrees – and he or she is the representative of the central government in the different communities: he or she has several state administration tasks.

The *municipal office* – which is called 'mayor's office' (polgármesteri hivatal) – hasn't own responsibilities, this body is the decision-making body of the mayor and the municipal clerk. In the small Hungarian municipalities a mandatory integration pf these bodies was established by the regulation of the Mötv: these municipalities shall form *joint municipal offices* (see later in point 9). The employees of these offices are professional public servants.

Thus the municipalities have the right to establish own municipal bodies within the framework of the Act of Parliament and within the framework of their own municipal tasks. The administrative structure is strongly determined by the central legislation. The structure has transformed in the last decade: the mayor, as a personal political leader has been strengthened by the Mötv. The significance of decision-making of the representative body and the professional leadership of the municipal clerk has been weakened. The roots of these changes were the strong politicization of the municipal administration and the eminent role of the mayor of the local party politics. Now the former informal structures have been the base of the new regulation and the informal structures turned to formal models.

6 Conditions under which responsibilities at local level are exercised

The mandate of the councillors begins by a *vote*. Since 2014 the term of the mayors and the councillors has been five years (until 2014 it was four years).

The councillors are primarily directly elected. In the municipalities which have more than 10 000 inhabitants approx.. 75% of the councillors are elected directly in constituencies, but approx.. 25% of the councillors are elected by a compensation list (the losing votes are considered in principle in this list). In the municipalities less than 10 000 inhabitant there are just one constituency, and the local voters have multiple vote. The constituencies are based on the first-past-the-post (FTPT) model, thus the Hungarian local democracy is based on the majoritarian democracy (Sóos & Kákai, 2011, pp. 537-538). The county councils are elected by a proportional system which is based on party-lists. The mandate of the councillors are free and the councillors cannot be recalled by the voters.

The representative body starts its current operation by its opening session. The end of the mandate is in principle the opening session of the representative body elected by the next general local elections. The mandate of the representative body can be ended before the end of general term, if the representative body is dissolved by the qualified majority decision of this body. There are time limitations for the dissolution decision: it cannot be within six month of the local general elections and after the 30th November of the year before the next general local election. As it was previously mentioned, the representative body can be dissolved by the Parliament if the representative body breach the constitution by through its operation or by through the lack of the (municipal) operation.

The mandate of councillors can be ended end before the next general local elections, in the following cases:

a) the councillor lost his or her right to vote,
b) conflicts of interest are stated,
c) the indignity of the councillor is stated,
d) absentee termination: if the councillor is absent from the sessions of the representative body for a one year period,
e) the councillor resigns,
f) the representative body is dissolved by itself or by the Parliament,
g) the councillor dies.

The cases of the incompatibility is defined by the Mötv. Three major cases can be distinguished: the incompatibility of another state and municipal post, economic incompatibility and incompatibility caused by managerial role in a media services (Nagy & Hoffman, 2016, pp. 161-162). The procedure on incompatibility is regulated by the Mötv. The decisions of the municipal councils can reviewed by the administrative and labour courts.

The councillors (and the members of the committees) are entitled to honorarium and to benefits in kind. The actual measure of these benefits are defined by municipal decree. The upper limit of these benefits are not defined by the Mötv. Just a general clause is in the Municipal Code: the mandatory tasks of the municipalities cannot be jeopardized by the high measure of the benefits. This rule is actually based on the situation of the small municipalities, which have just limited resources. It is stated by the Mötv that the presidents of the committees, the municipal commissioners could receive a higher amount of honorarium. The councillors are entitled to compensation if they have expenses incurred in the exercise of the office. The costs should be verified by invoices and the compensation is permitted by the mayor.

Thus the Hungarian regulation is based on the rules of the Charter and it gives a relatively great freedom for the municipalities to institutionalize and regulate these benefits and salaries. Thus a diversified model has been developed in Hungary, which depends on the size of the municipality, the duties on them, and on the local financial resources. Sometimes the model is based on the local political situation, as well.

7 Administrative supervision of local authorities' activities

The In principle, monitoring the legality of local government decisions is fundamentally divided between two different jurisdictions: arbitration on individual local government decisions is the responsibility of the judge, although any action on local administrative general decisions is – in principle – under the jurisdiction of the Hungarian Constitutional Court or the Curia of Hungary Kovács, 2017: 428; Nagy, 2017: 24-25). The Constitutional Court is charged with verifying the constitutionality of local government decrees. The Curia (The Supreme Court of Hungary) is charged with the verifying that local government decrees are in compliance with the legislation and with the decrees of the central government. In regard to the supervision of normative acts, there is no *actio popularis*, the procedure of the Constitutional Court can be initiated by the Government of Hungary, by the quarter of the members of the Parliament, by the president of the Curia, the Prosecutor General and by the ombudsman. A judge can initiate the constitutional review of a local government decree, if the violation of the Fundamental law is suspected by the judge. Similarly, the judicial review of the local government decrees can be initiated by the leader of the county government office, by the ombudsman and by a judge of a litigation who suspends, that the applicable decree is unlawful.

The legality of the municipal decisions are legally supervised by the county government offices. The actions, the decision-making procedure and the omission of the municipalities are supervised by the county government offices. In case of resolutions taken within local discretionary power, the head of the county government office could only control the legality of the decision, not its effectiveness nor its merits.Within the scope of its powers in the field of review of legality, the county government office may

1. issue a legal notice;

2. initiate the convocation of the representative body or the council of the inter-municipal association;
3. propose that the minister responsible for the legal supervision of the municipalities to initiate the submission of a Government proposal requesting the Constitutional Court to review the constitutionality of a local government decree;
4. initiate the review of the local government's resolution at an administrative and labour court
5. initiate the commencement of an administrative litigation against a representative body for an omission in decision-making or task performance obligation and for oredering substitute decision-making;
6. propose to the minister responsible for the legal supervision of the municipalities to initiate submission of a proposal by the Government for the dissolution of any representative body breaching the Fundamental Law;
7. initiate at the Hungarian State Treasury the withholding or withdrawal of a specific part of a state subsidy, defined by the Act of Parliament, due from the national budget;
8. file a suit against a mayor who commits serial violations, in order to remove him or her from office;
9. can initiate disciplinary proceedings against the mayor of the local government and against the chief executive before the mayor;
10. initiate an audit of the local government's book-keeping by the State Audit Office of Hungary;
11. provide professional help to local governments in cases arising from its tasks and powers and
12. impose a review of legality fine on the local government or on the partnership, in the cases determined by the law (Fábián & Hoffman, 2014, pp. 346-347).

If the government office finds a government *regulation of the government contrary to the Fundamental Law* – after the unsuccessful application of the legality appeal or the convocation of the body of representatives – it presents its proposal for the revision of the local government regulation by the Constitutional Court to the Government, with the draft of the motion being sent to the minister responsible for review of legality for local governments. After having examined the proposal, the minister can call upon the county government office to propose revisions to the local government regulation by the Constitutional Court, in order to complete or modify the motion. The minister informs the county government office which proposed modifications to the government regulation by the Constitutional Court and the government whose regulation is being challenged. After this, the minister files a Government motion to review the conformity of the local government regulation with the Fundamental Law. The government office sends the draft of the motion simultaneously to the minister responsible for review of legality for local governments and to the affected local government.

Within 15 days of receiving the information from the local government or after the unsuccessful expiration of the time allotted for providing information, the government

office can file decision at the Regional Courts which have administrative branches (the 8 assigned regional courts from the 20 regional courts. The municipal decrees could be filed regardless of the above mentioned time limit at the Curia. Simultaneously with the launching of the litigation process, the government office sends the motion to the affected local government.

The offending – individual – decisions can be annulled by the – (8) assigned – regional courts, and the offending normative decisions and decrees can be quashed by the Curia. If a decree or a normative resolution (or a specific part of a decree or the normative resolution) is quashed the decision of the Curia (or the decision of the administrative and labour court) should be published in the Hungarian Official Gazette. The rules of the litigation is regulated by the Act I of 2017 on the Code of the Administrative Litigation. The quashing procedure of the normative decisions and decreesof the municipalities have special rules which are regulated by the Chapter XXV of the Act I of 2017.

The head of the county government office also have legislative powers and obligations. If the government office states that the body of representatives has not fulfilled its obligation to legislate, it can file – while simultaneously informing the local government – a statement of the local government's neglect of its obligation to legislate with the Curia. If the local government does not fulfil its obligation to legislate within the deadline given by the Curia, the government office initiates proceedings in the Curia within 30 days of the termination of the deadline with the aim of allowing the government office to repair the negligence by the government office. The head of the government office enacts the regulation in the name of the local government, according to the rules for the regulations of the local government, so that the regulation is signed by the leader of the government office and is published in the Hungarian Official Gazette. The regulation enacted by the leader of the government office in the name of the local government has the status of a local governmental regulation, with the proviso that the local government is only authorized to modify it or to set it aside after the next local governmental election; before that time, only the leader of the government office is authorized to modify it.

If we look at the new model, *prima facie* full legal protection is provided by this new model of judicial and constitutional review to individuals. If we look closer at the regulation several lacunas could be noticed. The main problem is, that now an individual cannot initiate directly the judicial review of a local government decree. We have mentioned above that only the judge of the case, the ombudsman and the county government office may submit a request to the Curia. The procedures aim to safeguard first of all public interest, and regard the safeguarding of subjective rights and positions only as an accessory aim of them. Although the individuals can submit a constitutional complaint to the Constitutional Court against the decisions of the courts by the individuals, the success of these procedures is highly doubtful, as a local government decree rarely violates exclusively the Fundamental Law without being contrary to lower sources of law. The unconstitutional local government decree often violates an act of the

Parliament or a decree of a central government organ and – if the constitutional complaint is based on the unconstitutionality of the applied decree – the decree cannot be reviewed by the Constitutional Court in lack of competence. Exclusively the Curia is licensed by the new constitution, by the Act CLXI of 2011 on the Organisation of the Courts and by the Act I of 2017 on the Code of the Administrative Litigation to the judicial review of the legality of the local government decree.

8 Financial resources of local authorities and financial transfer system

Firstly, I would like to analyse the regulation on the static element of the municipal financial system, the regulation on the *municipal asset.* The regulation on the assets of the local government has been transformed during the last few years. The last amendment of the Constitution of the Republic of Hungary changed the article 12(2) of the Constitution, which was in force until 31st December 2011. The amendment allowed the Parliament to nationalize without any compensation the local government assets by an act, if the powers and duties of the local governments change, and the asset is related to such a task which does not belong to the new responsibilities of the municipality.

This amendment was in harmony with the new regulation of the Fundamental Law of Hungary. The article 32(6) states that "assets controlled by municipal governments shall be public property, serving the performance of municipal government tasks." According to this regulation, local government assets are are not separated from the assets of the central government, but rather these are together the *national assets.* Because of the local government asset is an integrated part of the national asset, it serves as the performance of the municipal tasks. Therefore if the responsible authority of the former municipal tasks has been changed, the asset may be free expropriated. Thus the local government asset can be classified as a kind of constitution of *trust*, which are is related to the tasks of the municipalities and it is not defended against the interventions of the central (parliamentary) legislation (Hoffman, 2013, p. 20 and Pálné, 2016, p. 84).

Since 1st of January 2012 the main rules on municipal asset have been regulated by the Act CXCVI of 2011 on the National Assets (National Asset Code). The *dual system* of the municipal asset has been remained, because the local government asset can be either a *core asset* or a *business asset.* The *core asset* directly serves as the performance of the obligatory municipal tasks. The core asset has two components. The first component is the *unfit core* asset which is an asset owned exclusively by local governments and which is determined by the National Asset Code and by another Act or the decree of the local government. The second component is the *limited marketable municipal asset* which is defined by an Act (of the Parliament) or by a local government decree. The local roads, the local parks and public spaces, the international airports and waters – not including water utilities – which are owned by the municipalities belong to the *exclusive municipal assets.* The *priority national assets* owned by the municipalities – which is part of the unfit municipal assets – are determined by the Annex II of the Act on the National Assets and by the decrees of the Local Governments. Records must be kept on the core assets of

the local government. The public utilities owned by the municipalities; the local public buildings which are maintained by the local governments and their institutions; the ownership of the local government in a public service company with a municipal majority ownership and the ownership of the local governments in the Balaton Shipping Co. is defined by the Act on National Assets as *limitedly marketable core asset.* This condition is linked to the performance of the public functions as long as public services are performed by these assets their marketability is limited. The free exercise of the right of the municipal ownership is limited by the regulations of the National Asset Code. Thus the business activity of the local government may not risk the performance of municipal tasks. Therefore the local government may take part in those companies which have the limited liability of for the members. The local government may not take part in companies which have no transparent ownership structure. The local governments shall adopt a medium-and long-term asset management plan. The *exclusive economic activities* of local governments are determined by the Act on the National Assets which can be performed by the institutions (governed by public law) of the local governments, by municipal-owned companies. The local governments can grant concession as well. *Trust law* can be established on the local government asset, which is regulated by the Municipal and the National Assets Codes.

Thus regulation on municipal asset has been transformed significantly: the former independency of the municipal asset and the protection of it from the nationalization has been eliminated. The municipal asset can be interpreted as a trust-nature asset, which can be nationalized if the municipal tasks are centralized.

Secondly, I would like to analyse the dynamics of the municipal finances, the *municipal revenues, budgeting and control.* Although it is a *separated subsystem,* the budget of the municipalities is *part of the national budget*. The separation does not exclude the subsidy of local governments by the state (by the central government). The local government finance is based on the *annual budget* of the municipality. The funding of the mandatory and voluntary municipal tasks and the delegated administrative powers is based on this legal norm. A significant change in the new Municipal Code is that the *operational deficit* cannot be planned, thus the expenditures of the performance of the municipal tasks shall not exceed the revenues. Therefore the *deficit* can be planned only for the financing of the *investments and developments.*

The municipal tasks can be funded by *own revenues*, *received funds* and *state subsidies.* The Act on the Local Self-Governments of Hungary states *that the local government is burdened by the consequences of loss management*, and the central government is not responsible for the obligations of the municipalities (Kecső, 2013, p. 26).
The following *public revenues* are considered municipal *own revenues*: *incomes*, *fees* and *charges* of municipal services and of municipal asset management, *dividend, profit* of the municipal business activity, *rent, received funds* as *private incomes* of the local government and *local taxes, fees* and *fines* . *Local taxes* are the *local business tax,* the *tourism tax,* the *communal tax of the individuals and the businesses,* the *land tax* and

building tax. The main changes of the regulation on own revenues are the new limitations of *local credits.* The permission of the Government of Hungary for local government borrowing was introduced by the article 34(5) of the Fundamental Law. The aim of this regulation is to prevent local government debt. This type of limitation is based on the regulations of several German provinces *(Länder)*. Thus the Government has a prior consent to the local government borrowing. Detailed rules are regulated/established by the Act CXCIV of 2011 on the economic stability of Hungary. Shortly, in principle all loans and other transactions with a nature of loan (for example municipal bonds) shall be permitted by the Government. There are broad exceptions of this principle. For example there is a *de minimis* rule and illiquid loans do not need permission. Similarly, loans which are required for the financing of projects with the co-payment of the European Union and the reorganization credits linked to the municipal debt settlement process do not need the consent of the Government. Although there are other huge number of the exceptional cases, the financial freedom of local governments is significantly limited by this legal institution. The aim of this regulation was to *prevent the indebtedness of the Hungarian municipalities.*

The *assigned central taxes* have remained as the revenues of the local governments, but their significance was weakened. Such an assigned central tax is the income tax of land rent.

The regulation on state subsidies was significantly changed by the new Municipal Code. In 2013 a *task-based financing* system was introduced. Thus state subsidies are based on the mandatory (obligatory) tasks of the municipalities. Firstly they depend on the standards of the services defined by legal norms. The efficient management, the expected own revenue of the municipality and the actual revenues of the local self-governments have to be taken into account by the determination of the subsidies. The determination of this subsidy is based on the efficient local management, the expected own revenues of the municipalities and the actual local revenues. The main principle of the task-based financing system is the *additional nature:* the own revenues of local governments are complemented by the state subsidies, thus local communities are interested in collecting their own revenues (Kecső, 2013, pp. 27-28). The task-based subsidies are earmarked, thus the expenditure shall be spent on the financing of the obligatory and several – by the act on the annual central budget defined – voluntary tasks several – defined by the act on the annual central budget – by of the municipalities. The *normative state subsidies* of several local public services have remained. The services of the social care, of the kindergartens and several cultural services are directly financed and these supports are not integrated into the task-based funding. The *complementary state subsidies* remained: in exceptional cases, local self-governments that are disadvantaged through no fault of their own may receive this state subsidy in order to protect their independence and viability.

Local governments are responsible for their economic management, thus local government can also go bankrupt. The procedure of liberating the bankrupt municipalities

from debts is regulated by the Act XXV of 1996.

Another important field of the financial resources is the *financial control* of the municipalities. The legality of economic decisions is supervised by the county (metropolitan) government office. The economic activities of local governments are controlled by the *State Audit Office of Hungary*, which controls and monitors the legality, expediency and effectiveness of these decisions. The subsidies co-paid by the European Union are controlled by an independent regime. New element is the ASP (Application Service Provider) system which allows to the State Treasury a real-time control on the municipal finances. The financial control and monitoring within the municipal organization system were amended partially. Similarly to the former regulation, the internal control is conducted by the municipal clerk. The internal audit has been simplified by the new Municipal Code because the audit by independent auditor companies is no longer required by the municipal law.

Summarizing the financial freedom of local governments and the defence of assets: they were weakened by the new regulations of the municipal law. Thus the financial autonomy of the municipalities is very limited in the new Hungarian municipal system. These changes have been justified by the prevention of the local government debt and by more efficient national asset management.

9 Local authorities' right to associate

First of all, it should be mentioned, that the right to establish cooperation with foreign municipalities have been recognized by the former Constitution of the Republic of Hungary and the by Fundamental Law of Hungary, as well. The cooperation with foreign municipalities is widespread in Hungary, practically every town have foreign partner municipalities, and a significant number of the villages have similar partnerships, as w29ell (Fazekas et al., p. 298-300).

As I have mentioned earlier, the regulation of the Ötv on the inter-municipal cooperation was based on a diversified and differentiated system. The basic rules on the inter-municipal associations were regulated by the Ötv, but the definitions on the types of these associations and the rules on the organization and finance of these forms were regulated by the Act CXXXV of 1997 on the Inter-municipal associations and the cooperation of the local governments. There were acts on specific types of the associations. Such acts were the Act CVII of 2004 on the Inter-municipal Associations of the Small Regions and the Act XXI of 1996 on the Regional Development and Planning which contained rules on the regional development associations. The Act CVII of 2004 was based on the French model, it was strongly influenced by the *loi Chevènement*[11]. An important difference was that – as I have mentioned earlier – the former Hungarian constitutional regulation was

[11] *Loi nº 99-586 du 12 juillet 1999 relative au renforcement et à la simplification de la coopération intercommunale (loi Chevènement)*

based on the voluntary cooperation of the municipalities. Therefore the different types and forms of inter-municipal associations were encouraged by financial aid of the central government. Thus a significant growth of the number of the cooperative forms was resulted by this new model of diversified, state-supported inter-municipal system (see Table 2)

Table 2: Number of service provider inter-municipal associations from 1992 to 2005

Year	Number of the inter-municipal associations responsible for public service provision
1992	120
1994	116
1997	489
1998	748
1999	880
2003	1 274
2005	1 586

Source :Hoffman et al., 2016, p. 460.

This diversified system has been replaced by a unified model. The general rules on the inter-municipal associations are regulated by the Chapter IV of the Act CLXXXIX of 2011 on the Local Self-Governments of Hungary, but there are other legal institutions which have the nature of an inter-municipal cooperation. These legal institutions are regulated by other public law instruments. As it was mentioned above, the article 34(2) of the Fundamental Law of Hungary allows the Parliament to require the performance of an obligatory municipal task by inter-municipal cooperation. The Parliament can establish by an act a mandatory inter-municipal association. The Chapter IV of the Municipal Code does not contain rules on these mandatory established associations, but other articles of this Act have such rules.

The amendments of the Act on the Local Self-Governments of Hungary have dual nature. Firstly, the formerly differentiated system in which there were institutionalized several types of the inter-municipal associations has been simplified. Only one type of the inter-municipal associations is regulated by the new Municipal Code: the *association with legal personality*. Secondly, the formerly separated – regulated (Józsa, 2006, pp. 106-107) in the Act CXXXV of 1997 on the Inter-municipal Cooperation and Associations and in the Act CVII of 2004 on the Associations in the Small Regions – legal norms were incorporated in the Municipal Code. The section 87 of the Municipal Code states that the representative bodies (councils) of the municipalities may form inter-municipal associations with legal personality in order to more efficiently and appropriately perform one or more municipal tasks or the delegated tasks of the mayor and the clerk. Although only the association with legal personality is declared by the Act on the Local Self-Governments of Hungary the new rules allows to establish different service delivery districts within the associations. Thus the new associations are mainly umbrella associations which unify more inter-municipal cooperation with different participating

local governments. The association shall be established by a *written agreement* of the participant local governments. It is based on the decisions of the representative body. These decisions have been made by qualified majorities of the bodies. A decision with qualified majority is required for the access to the association, as well. Access can take place on the first day of the year (1st January) having regard to the legal personality of the association. The secession can take place – for similar reasons – on the last day of the year (31st December). The representative body shall decide on the access or the separation at least six month earlier and the body shall inform the council of the association shall be notified of the intention of separation or access (Nagy & Hoffman, 2016, pp. 302-312).

The association can establish organizations governed by public law, companies, non-profit organizations and other form of organizations for the performance of the public task. Because of the legal personality of the association, it has an asset which is separated from the local governments which established this cooperation, but this asset is a part of the national asset. In the legal disputes related to the associations, the *courts of public administration and labour* have jurisdictions. Formerly the ordinary, civil courts have had jurisdictions in these cases, because these disputes were considered by the legislation – which was in force until 31st December 2012 – as disputes governed by private law (see the decisions No. 5.Pf.20.332/2008/4. of and No. Pfv.X.20.104/2009/4. of the Hungarian Supreme Court). The procedural rules on the juridical review of the inter-municipal cases changed significantly after January 1st 2018: these disputes are interpreted as special administrative remedies, and the procedures are regulated by the Act I of 2017 on the Code of the Administrative Litigation.

If there is no other rule in the agreement on the association, the participant local government shall financially support the association proportionally in proportion to the number of their population. The cessation cases of the association and the mandatory elements of the agreement on the inter-municipal association are defined by the Act on the Local Self-Governments of Hungary.

The central organ of the inter-municipal association is the *council of the association,* whose members are delegated by the representative bodies of the participant local governments. The members of the council have a vote which is defined by the agreement. The decisions of the councils are made by in the form of a *resolution* because the associations do not have legislative powers.

The legal supervision tasks are performed by the county (metropolitan government) offices. Thus the government office can convene the council, and it can initiate a lawsuit at the court of public administration and labour on the grounds of violation of law and the government office may impose a fine of legal supervision.

Because of the lack of the incentives and the centralized municipal tasks – practically the main tasks of the former associations were centralized, and these tasks are performed now

by the central government and by its agencies – the number of the voluntary association seriously – by approx. 40% – dropped (see Table 3)

Table 3: Number of the (voluntary) intercommunal associations in 2013 and 2014

Year	Number of (voluntary) intercommunal associations
2013	1185
2014	709

Source: Balázs & Hoffman, 2017, p. 16.

Two other form of the inter-municipal cooperation is regulated by the Mötv: the fully integration of the municipal organization and finance, the associated representative body of the settlements and the integration of the administrative organization of the local governments, the common office of the settlements. The *associatied representative body* can establish by the representative bodies of the given settlements. The annual budget is united by this form of cooperation and a common municipal office and common municipal institutions are maintained. As I have mentioned earlier, the *joint municipal offices* of the villages (and exceptionally the common office of the towns and the villages) can be interpreted as *mandatory inter-municipal associations.* This form of cooperation is the mandatory integration of the administrative organization of the small Hungarian municipalities. The result of this new regulation is a heavy concentration process: in 2014, the major form of local administration was already the joint municipal office (see Table 4).

Table 4: Municipal offices and joint municipal offices in Hungary (2014)

Joint municipal offices		Number of the (independent) municipal offices (mayor's offices) in Hungary	Number of the local municipalities in Hungary
Number of the joint municipal offices	Number of the participant municipalities		
749	2632	521	3,153

Source: Fazekas *et al.*, 2015, p. 299

The municipalities tried to fight this centralization process. Several municipalities, even though obliged, did not join the joint municipal offices. When the commissioner of government replaced their consent to the agreement, and joined them forcedly to a joint municipal office, these municipalities sued these decisions before administrative courts. Several judges handling such cases turned to the Constitutional Court. The judicial applications accepted by the Court stated the regulation to be contrary to the European Charter of Local Governments. The provisions of the Mötv on the joint municipal office were seen to infringe Article 6, which gives the freedom of determination of appropriate administrative structures, and Article 4 para 6 on the duty of preliminary consultation in the planning and decision-making processes for all matters which concern local

governments. The Constitutional Court did not annul the contested rules, in its decision 22/2015. (June 15) it stated that the freedom of municipalities regarding the determination of their administrative structures has its limits in the provisions of the Fundamental law and other statutes setting up rules on these structures. The municipalities have to consider these rules. The Court stressed that the municipalities have the possibility to mutually agree with other municipalities on the joint municipal office within the fixed time limits given by the Mötv. The government commissioner can only act, if the municipality did not fulfil its duty. The possibility of the government commissioner to decide on the forced joining of a municipality to an office or to replace the agreement establishing the office is an extraordinary last tool, which is necessary for ensuring the effective administration and the right of the inhabitants to self-government. The need for effective administration entitles the state administration to intervene, and the infringed tool of the supervisory authority is in line with Article 8 para 1 of the Charter, too. The only point where the Constitutional Court accepted the applications was the infringement of Article 4 para 6 of the Charter. It held that an unconstitutional omission exists, because of the lack of rules for the consultation with the affected local governments. The Court obliged the legislator to heal the omission until the end of 2015, but the new regulation was passed only in 2018 (Act CXXI of 2018) and it entered into force only on January 1st 2019.

Thus the Hungarian inter-municipal system is an important element of the local governance in Hungary which is connected to the fragmented spatial structure. The model is based on the voluntary cooperation, however the mandatory cooperation was established by the new Fundamental Law of Hungary. The voluntary associations are responsible for the joint provision of local public services, The mandatory common municipal offices are responsible for the local administration. The regulation on mandatory common municipal offices was revised by the Hungarian Constitutional Court. An unconstitutional omission was stated because they have not been institutionalized regulation on the consultation with the municipalities when the common municipal offices are established by the agency of the central government. The omission was repaired by the Act CXXI of 2018.

10 Legal protection of local self -government

It is stated generally by the article 5 of the Mötv that the lawful exercise of the municipal powers are protected by the courts and by the Constitutional Court. Although this is a general statement, the actual regulations on the legal protection of local self-governments are defined by the Act CLI of 2011 on the Constitutional Court, by the Mötv and by the Act I of 2017 on the Code of the Administrative Court Procedure.

Thus there is a general statement on the protection of the municipal powers, but a suit for the defence of the municipal rights have not been institutionalized by the new Hungarian regulation. The acts of the Parliament and the decrees of the central government which violate the self-governance of the municipalities cannot be sued. As I have mentioned earlier, the municipal autonomy is interpreted as the constitutionally defended powers of

the local governments, but they are not interpreted as fundamental rights. These rules cannot be directly sued by the municipalities, because the former *action popularis* of the a posteriori constitutional review of these acts and decrees was abolished. As I have mentioned earlier, this constitutional review can be initiated by the Government of Hungary, by the quarter of the members of the Parliament, by the president of the Curia, the Prosecutor General and by the ombudsman. The municipalities did not have the right to sue these acts.

Although the constitutional complaint has been institutionalized as a lawsuit against the unconstitutional rules this complaint can be brought in the case of the infringement of fundamental rights. As I have mentioned earlier, the municipal autonomy is not interpreted as fundamental right, thus this complaint cannot be practically initiated by the municipalities.

Therefore the protection of the local self-government is *indirect* in the Hungarian legal system: these procedures can be initiated by the above mentioned bodies, therefore the municipalities shall ask these bodies. Thus the legal protection of the Hungarian local government cannot be interpreted as a strong and efficient system.

11 Future challenges of the implementation of the European Charter of Local Self-Government in ... legislation

The Hungarian system based on the European Charter of Local Governments was one of the most decentralized municipal systems in Europe. Due to the fragmented spatial structure and broad responsibilities of the local governments, serious inefficiency problems evolved in the Hungarian self-governance.

This model has been changed after 2011/2012 after the new Hungarian constitution. The elements of the new model introduced in 2011/2012 are not unknown in European democracies. It is rather the mixture of these elements, which is unfamiliar: a strong centralization of the delivery of former local public services, and at the same time the concentration of the local public administration. The former concentration of the local government system partially remained, but the inter-municipal associations are now mainly responsible for the joined local administrative tasks, which turns this form of concentration into a mode of centralization in its effects. Now, Hungary has a very centralized local administration system, in which the autonomy and the service provider role of the local governments (and their inter-municipal entities) have been largely weakened. This transformation has been a much stronger centralization than the changes in the European countries after 2008/2009.

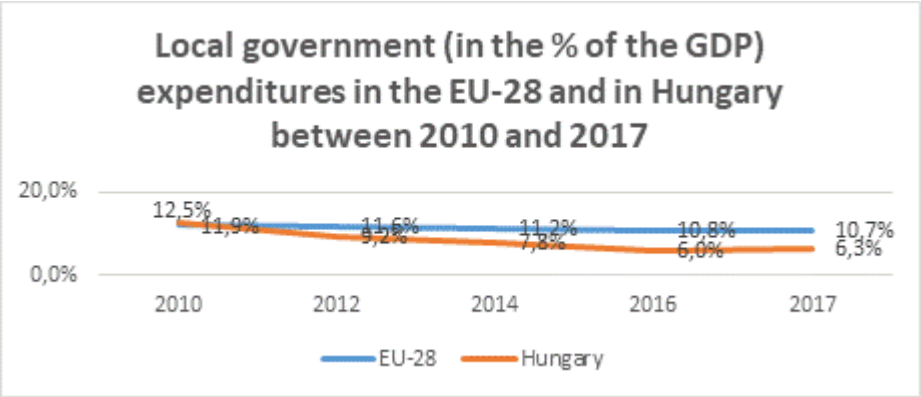
Although a strong centralization has taken place, the resistance was relatively limited. The new approach on the local autonomy of the political decision-makers will not alter in short time, and there is not a strong request for the change of this concept among the experts and scientists. It seems to be that the changes are noted by the Hungarian decision-

makers, local politicians, by the councils of the Hungarian municipalities and by the scientists and experts.

The new municipal regulation was strongly criticized by the Monitoring Committee of the Charter. The revision of the new municipal regulation was recommended by the Recommendation 341 (2013) of the Congress of Local and Regional Authorities[12]. The recommendation stated that the constitutional guarantees of the local governance were significantly weakened, the financial autonomy and the judicial protection of the rights of the Hungarian municipalities is not enough sufficient, the competences of the counties should be strengthened, and the consultation between the central and local government should be not only formal as it has been institutionalized by the new rules.

Although the rules of the new regulation are basically consistent with the Charter, the new regulation could be interpreted as an actual backward. The role of the municipalities have been significantly weakened which can be observed by the municipal expenditures. In 2010 the municipal expenditures were 12,5% of the GDP and in 2017 only 6,3% (in the EU-28 in 2010 the municipal expenditures were 11,9% and in 2017 10,7% of the GDP) (see Figure 1.

Figure 1: Local government (in the % of the GDP) expenditures in the EU-28 and in Hungary between 2010 and 2017



Source: Eurostat (http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00023&language=en, downloaded at April 15th 2018)

Thus the main challenge of the recent municipal legislation in Hungary the centralization of the local administration. The municipalities should find their place and role in the new, strongly centralized Hungarian public administration.

[12] The Recommendation can be found at https://rm.coe.int/168071910d#_Toc371513645

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